

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO

as representative of:

THE COMMONWEALTH OF PUERTO
RICO, THE EMPLOYEE'S RETIREMENT
SYSTEM OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,
AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY

Debtors

PROMESA

Title III

Case No. 17-bk-3283 (LTS)

(Jointly Administered)¹

MOTION TO STRIKE UNAUTHORIZED REPLY MOTION

TO THE HONORABLE COURT:

COMES NOW **Finca Matilde, Inc.** ("Finca Matilde"), a creditor in the captioned case, whom, through the undersigned legal counsel, very respectfully state, pray, and moves to strike the *Informative Motion of the financial Oversight and Management Board of in Accordance to with Order Regarding Certain Aspects of Motion for Confirmation of Modified Eight Amended Title III Plan and Confirmation Order* (the "Motion to Inform"), filed by the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") for the reasons stated herein below:

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 35(787)66-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

1. On December 14, 2021, this Court entered the *Order Regarding Certain Aspects for Confirmation of Modified Eight Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (the “Memorandum Order”) which, among other things, determined that “any treatment in the Proposed Plan that provides less than just compensation for allowed eminent domain and inverse condemnation claims by way of impairment and discharge in bankruptcy does not comply with the Fifth Amendment.” [Docket No. 19517, p. 14, fn. 6].² In such Memorandum Order, this Court ordered the Oversight Board “to submit either (i) a proposal of modifications consistent with this Memorandum Order or (ii) a showing of cause as to why the motion for confirmation should not be denied in the absence of such modifications.” [Docket No. 19517, p. 17]. The Oversight Board was granted until December 20 to make their submission, and creditors were granted until December 23 to submit any responses. [Docket No. 19517, p. 17]. The Court did not provide for replies or sur-replies. Thus, any reply required Court authorization.

2. In response to this order, the Oversight Board submitted new plan materials and responded to the Court’s order to show cause. [Dockets No. 19570-72, 19574]. Finca Matilde along with several other creditors responded to the Oversight Board’s filings [Docket No. 19608]. On December 30, 2021, the Oversight Board filed the Motion to Inform. It is a tenet of federal litigation that titles and labels are not controlling. See e.g. Garrett v. Grant Prideco, L.P., No. H-08-3463, 2009 U.S. Dist. LEXIS 35592 (S.D. Tex. Apr. 27, 2009). Despite its label, the Motion to Inform is not an informative motion, but rather a reply brief to the several objections filed by creditors without requesting prior leave, specially to address the issue of nonpayment of interests accrued post-petition.

² Unless otherwise specified, all references to a “page” or “pages” in a docket entry refers to the pagination of the C/M ECM e-filing system at the top header of each page.

Therefore, Finca Matilde moves the Court to strike such. If it is not stricken, Finca Matilde alternatively requests that this Court allows this short sur-reply.

3. Taking creditors have a right to collect just compensation. Just compensation encompasses the total value of the property when taken, plus interests from that time. Knick v. Twp. of Scott, 139 S. Ct. 2162, 2170 (2019); in Jacobs v. United States, 290 U. S. 13, 17 (1933); Seaboard Air Line R. Co. v. United States, 261 U.S. 299, 306 (1923). Moreover, “[t]he form of the remedy does not qualify the right. It rests upon the Fifth Amendment.” Knick v. Twp. of Scott, 139 S. Ct. 2162, 2170 (2019); Thus, the Supreme Court has established that a Takings Creditor right to interests emanates from the Fifth Amendment and is not dependent on a state law provision of such. To pay Takings Claims the principal balance of their claim, without post-petition interests would not be just compensation but a partial compensation insufficient to pass the muster the Takings Clause of the Fifth Amendment insofar it would discharge the unpaid portion in clear contravention of the Takings Clause of the Fifth Amendment and this Court’s Memorandum Order.

WHEREFORE, Finca Matilde hereby moves the Court to entertain this motion and requests that the Motion to Inform be stricken as an unauthorized reply. Alternatively, Finca Matilde moves the Court to allow this short sur-reply.

I HEREBY CERTIFY, that on this I electronically filed the foregoing with the Clerk of the Bankruptcy Court using the CM/ECF system, which will send electronic notification to all participants.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 10th day of January of 2022.

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